



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-1105

Dear Ms. Plummer:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40298.

The Texas Department of Mental Health and Mental Retardation ("MHMR") received a request for information concerning an allegation of patient neglect. You contend that the information at issue is made confidential pursuant to section 552.101 of the Government Code. Section 552.101 provides an exception from disclosure for "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

You have submitted to this office for review Exhibits 1 through 12, which you assert are confidential in their entirety under section 48.101 of the Human Resources Code. You also argue that portions of the documents are confidential under section 595.001 of the Health & Safety Code.

Section 48.101, which generally makes confidential records of investigations of abuse and neglect made under chapter 48 of the Human Resources Code, provides in pertinent part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

We have reviewed the documents at issue and agree that Exhibits I through II are protected in their entirety from disclosure pursuant to section 48.101.

Section 595.001 of the Health & Safety Code provides that:

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

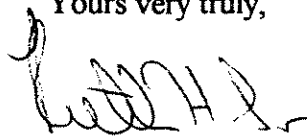
Neither sections 595.003 or 595.004 are applicable in this situation. We agree that most of the documents in Exhibit 12 are protected, in their entirety, from disclosure under section 595.001. However, we have marked some documents, Human Resource Development class sign-up sheets, that may not be withheld in their entirety.

The name of a patient, whose identity is protected under section 595.001, is written on some of the sign-up sheets. The patient's name must be withheld from disclosure. In addition, the sign-up sheets list the social security numbers of the employees who signed up for the classes. You indicate that section 552.117 is applicable to the social security numbers of employees other than the requestor. Sections 552.117 and 552.024 of the Government Code provide that a current or former public employee can opt to keep private his or her home address, home telephone number, social security number, and information that reveals whether that person has family members. You must withhold the social security numbers of those individuals who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).

We note also that federal law provides for the confidentiality of social security numbers obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994) at 4. Thus, even if employees other than the requestor did not opt to keep their social security numbers confidential under section 552.117, you should determine whether those social security numbers are confidential under federal law prior to disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Ruth H. Soucy', written over a horizontal line.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40298

Enclosures: Marked Documents

cc: Ms. Jean Spies